

# EXHIBIT 44

Vito, Robert - Vol. IV

February 6, 2008

Philadelphia, PA

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----x  
IN RE: PHARMACEUTICALS ) MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE ) Civil Action  
PRICE LITIGATION ) 01-CV-12257-PBS  
-----)

THIS DOCUMENT RELATES TO: ) Judge Patti  
U.S. ex rel. Ven-A-Care ) B. Saris  
of the Florida Keys, Inc. )  
v. Abbott Laboratories, ) Magistrate  
Inc., et al, ) Judge Marianne B.  
No. 06-CV-11337-PBS ) Bowler  
-----x

VOLUME FOUR

Continued Video Taped Deposition of ROBERT VITO,  
was taken pursuant to notice at Morgan, Lewis, 1701  
Market Street, Philadelphia, Pennsylvania, on.  
Wednesday, February 6, 2008, beginning at 9:10 a.m.,  
before Jeanne Christian, Court Reporter-Notary  
Public, and Richard Kanzinger, Jr., Video Tape  
Operator, there being present.

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1 1997, and there was also another change that  
2 they made, I think based on some work where we  
3 had shown that the -- that some of the generic  
4 prices were higher than the brands. I think  
5 there were some changes, but other than that, I  
6 don't remember, and I would suggest that you  
7 talk to them.

8 BY MR. MERKL:

9 Q. Well, the '97 change to 5 percent off AWP  
10 was before this report, right?

11 **A. That's correct.**

12 Q. And even after that change, you told them  
13 they were still paying seven times more, right?

14 MR. AZORSKY: Objection,  
15 form.

16 THE WITNESS: We did in 2000,  
17 yes.

18 BY MR. MERKL:

19 Q. You can put that one aside. I'm handing  
20 the witness what we previously marked as Dey  
21 Exhibit 17. Dey Exhibit 17 is a memorandum,  
22 dated November 8, 1995.

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1                   Could you take a look at  
2     that, please?

3     **A.       (Witness complies.)**

4     Q.       Mr. Vito, this is a memo we got from your  
5     counsel. I believe it comes from the OIG  
6     working files and the Albuterol reports.

7                   Does this look like the sort  
8     of thing that would come from your Albuterol  
9     working files?

10    **A.       Yes, sir.**

11    Q.       It says to Rob, Bob, Amy. Can you tell me  
12    who each of those persons were?

13    **A.       Rob is, I believe, myself, Bob is Bob**  
14    **Katz, Amy is Amy Sernyak.**

15    Q.       And it is from Karen. Who is Karen?

16    **A.       Karen worked in our office for some -- for**  
17    **a short period of time.**

18    Q.       And can you describe for me what this  
19    document is?

20    **A.       It said: There are three spread sheets**  
21    **listing supplier prices for Albuterol Sulfate.**  
22    **The suppliers' price listing are divided into**

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1     **three categories.**

2     Q.     Well, do you recall getting this document?

3     **A.     I don't recall, but I'm sure, it has my**  
4     **name on it.**

5     Q.     You have no reason to doubt you got it at  
6     the time?

7     **A.     Probably not.**

8     Q.     And this is the sort of information that  
9     you would use to put together to work on the  
10    Albuterol reports we had just taken a look at?

11                   MR. AZORSKY:  Objection to  
12    form.

13                   THE WITNESS:  Yes.

14    BY MR. MERKL:

15    Q.     And this document summarizes Albuterol  
16    pricing information that the OIG had access to?

17    **A.     I don't know if this is the final version**  
18    **or not, but it is probably -- if it is, it is.**  
19    **This is what we do when we get the information,**  
20    **yes.**

21    Q.     Well, it is a working document summarizing  
22    pricing information?

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1     **A.**     Right, but I don't know if this was the  
2     final one or if it was an intermittent one.  
3     Multiple times, I look at things. So I don't  
4     know exactly, you know, what time in the review  
5     this was.

6     Q.     And the three categories that it is broken  
7     up into are three different types of -- I'm  
8     sorry, three different sources that suppliers  
9     acquire Albuterol from, right?

10    **A.**     Yes.

11    Q.     So you were looking at these three groups  
12    to get pricing information?

13    **A.**     Yes.

14    Q.     And one of the -- and this document tells  
15    you that you got pricing information from Dey  
16    invoices, right?

17    **A.**     We have suppliers who look like they  
18    purchased it from Dey, yes.

19    Q.     Well, Roman I there says: The only  
20    manufacturer's invoice I have is Dey's, right?

21    **A.**     Yes, sir.

22    Q.     So this document tells you you actually

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1 had Dey's invoices in front of you, right?

2 **A. From the manufacturer -- from the**  
3 **supplier.**

4 Q. Right.

5 **A. Because we went to the supplier to get**  
6 **that information.**

7 Q. I'm not trying to suggest you went to  
8 Dey. I'm saying, you got a Dey invoice, but I  
9 guess it came from a supplier of some kind,  
10 right?

11 **A. Yes.**

12 Q. But it was a Dey invoice?

13 **A. That's what it says, yes.**

14 Q. And it also says the only manufacturer you  
15 got an invoice from is Dey?

16 **A. That's what it said.**

17 Q. Do you know why that is?

18 **A. I don't know why.**

19 Q. Do you recall getting it from any other  
20 manufacturers?

21 **A. I don't recall.**

22 Q. Well, if that is, in fact, true, it is

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1 fair to say then that these OIG reports about  
2 Albuterol that we have been looking at reflect  
3 Dey's pricing?

4 MR. DRAYCOTT: Objection.

5 MR. AZORSKY: Objection to  
6 form.

7 THE WITNESS: I don't know --  
8 I don't understand your question.

9 BY MR. MERKL:

10 Q. What don't you understand?

11 MR. WINGET-HERNANDEZ:

12 Objection, form.

13 THE WITNESS: Well, I think,  
14 clearly, when they set the prices, the Dey  
15 Laboratory product was included in that with all  
16 the other products that met the characteristics  
17 of zero point -- point zero three -- point 083  
18 percent, so that's clearly -- you know, your  
19 product was included, as many other products  
20 were included when they tried to set the price  
21 for the Medicare reimbursement.

22 BY MR. MERKL:



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1 Q. All I'm saying is, the reports you wrote  
2 that explain your findings about Albuterol  
3 Sulfate, those reports were talking, at least in  
4 part, about Dey prices, right?

5 **A. Yes.**

6 Q. Because it was based on information  
7 gotten, perhaps, indirectly, from Dey via these  
8 invoices, right?

9 **A. From the invoices.**

10 Q. From the Dey invoices, right?

11 **A. Invoices from suppliers that indicated**  
12 **that they got it from Dey.**

13 Q. And if you go to the next page, at the  
14 bottom, it has a few notes, okay? It says: Dey  
15 charges different prices to different  
16 customers.

17 Do you remember that?

18 **A. I do not remember that.**

19 Q. Well, do you know, was that a common  
20 phenomena among drug companies, that they charge  
21 different prices to different customers?

22 MR. DRAYCOTT: Objection.

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1 THE WITNESS: I don't know.

2 I think you should ask the drug companies. We  
3 are just getting the information.

4 BY MR. MERKL:

5 Q. Yes, but you were writing reports and  
6 studying pricing. You would have learned if  
7 companies charge different prices, wouldn't you?

8 MR. AZORSKY: Objection to  
9 form.

10 MR. DRAYCOTT: I join in the  
11 objection.

12 THE WITNESS: I -- we got the  
13 pricing information and then analyzed the  
14 pricing information. Apparently, they said that  
15 in this instance, they saw that the price varied  
16 among customers.

17 BY MR. MERKL:

18 Q. In fact, it says: Price could vary as  
19 much as 30 percent? Do you see that?

20 **A. Yes, I see that.**

21 Q. Is that a big difference?

22 MR. DRAYCOTT: Objection.

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1 MR. AZORSKY: Objection to  
2 form.

3 THE WITNESS: You have to  
4 make the determination if you believe it is big  
5 or not. I believe the number 30 is there.

6 BY MR. MERKL:

7 Q. Is that consistent with what you found  
8 from looking at other companies' invoices?

9 MR. DRAYCOTT: Objection.

10 THE WITNESS: I don't recall,  
11 and I don't know if we actually did that type of  
12 analysis.

13 BY MR. MERKL:

14 Q. Now, the first spread sheet that's  
15 attached is Supplier Prices for Albuterol  
16 Sulfate Purchased From a Manufacturer.

17 So that would be -- supplier  
18 is a pharmacy or a doctor, who pays -- is that  
19 what you mean by supplier here?

20 **A. The supplier is like the name of the**  
21 **company there, like Accurate Medical,**  
22 **Respi-Flow, those are the suppliers that**

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1     **provided the drug and billed the Medicare**  
2     **program.**

3     Q.     And in the right-hand column, you see  
4     reading down, it says 14.00, 12.67, 11 -- those  
5     were all the different prices these different  
6     suppliers paid for Dey drugs, right?

7     **A.     I believe -- well, if there are all from**  
8     **Dey, then that would be the case.**

9     Q.     Well, the cover memo says the only  
10    invoices from a manufacturer were Dey, right?

11   **A.     Well, if that's the case. Again, I don't**  
12   **remember offhand, but it says that, so if that's**  
13   **the case, then these would be all the product**  
14   **that was -- it would be the Dey product.**

15   Q.     In any case, what it tells us is that the  
16   prices on all the invoices were all different,  
17   right?

18   **A.     Well, they are different prices.**

19   Q.     AWP -- well, let's go to the next one. It  
20   is Supplier Prices For Albuterol Sulfate  
21   Purchased From a Wholesaler.

22                                   Do you see that?

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1     **A.     Yes, sir.**

2     Q.     And again, if you look at the price per  
3     milliliter on invoice column, again, these  
4     providers are paying all different prices,  
5     right? There is no single price, right?

6     **A.     There are different prices.**

7     Q.     And this range is a lot more, it goes from  
8     like 13 cents to 25 cents, right?

9                     MR. AZORSKY: Objection to  
10    form.

11                    THE WITNESS: I don't know  
12    exactly what the ranges are, but it does --  
13    there are different prices in there.

14    BY MR. MERKL:

15    Q.     If you look, it says, top right-hand  
16    corner, 13 cents, the first one there. It says,  
17    supplier, Health Meds for Smith, CA 16 there, do  
18    you see that one? 13 cents, right?

19    **A.     I do see that.**

20    Q.     And under that, it says 25 cents, two  
21    under that?

22    **A.     Yes.**

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1 Q. For Komoto Pharmacies?

2 **A. Yes.**

3 Q. So when you buy from a wholesaler,  
4 depending on what wholesaler you buy, you could  
5 pay almost double what you would -- if you got  
6 it somewhere else, right?

7 **A. I don't know their buying practices or how**  
8 **they negotiate. You had better ask them.**

9 Q. I guess all I'm asking you is what this  
10 report tells us. And this report tells us that  
11 OIG knew that depending on what wholesaler you  
12 bought it from, you could pay almost double for  
13 Albuterol in 1996, right?

14 **A. I don't --**

15 MR. AZORSKY: Objection,  
16 form.

17 MR. DRAYCOTT: I join in the  
18 objection.

19 THE WITNESS: I don't -- I  
20 didn't do that analysis right now, so I don't  
21 know that I could give that to you, but I do say  
22 that prices varied.

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1 BY MR. MERKL:

2 Q. Now, again, if we look the summary page, I  
3 guess it says: Purchase from a wholesaler,  
4 supplier prices for Albuterol -- it is kind of a  
5 summary page. It is at HHD 011-0925?

6 **A. Yes, sir.**

7 Q. There is an average, 18 cents, and then  
8 under that says, high, 31 cents; low, 13 cents.

9 So that's the range of prices  
10 that you found on invoices from wholesalers to  
11 suppliers, right, 31 cents to 13?

12 **A. Yes, that's what that says, I believe,**  
13 **yes.**

14 Q. So, again, depending on what wholesaler  
15 you bought from, you could pay anywhere from 13  
16 cents to 31 cents for the same Albuterol, right?

17 **A. I'm not certain that's the -- I'm not**  
18 **certain that that is the only case. It could be**  
19 **that you might even get a different price from**  
20 **the same wholesaler. I'm not sure. I didn't --**  
21 **to look at this, I would have to look at every**  
22 **wholesaler, and then look at the prices to see**